

6 CM(M)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (M) NO.388/2008

SMT. MADHU JAIN Petitioner

Through Mr. Ashwani Kumar Gupta, Advocate.

versus

BSES-YAMUNA POWER LIMITED Respondent.

Through Mr. Amar Gupta , Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER

% **28.03.2008**

1 . Issue notice. Mr. Gupta accepts notice and states that the matter can be disposed of at this stage.

2 . In this proceeding, under Article 227 of the Constitution of India the petitioner claims to be aggrieved against the order dated 20.3.2008 whereby the learned Civil Judge declined his application for interim order to restore the electricity connection in terms of a deposit already made.

3. This litigation has somewhat chequered history; the petitioner had filed WP No. 16825-26/2006, being aggrieved by a bill for the sum of Rs.12,14,111.00 issued by the respondent. That petition was disposed of by an order dated 29.11.2006. In its terms the petitioner was permitted to deposit 50% of the bill amount within 12 weeks of which

Rs.2,50,000/- was to be paid within four weeks. Subject to the condition a statement was recorded on behalf of the respondent that it would proceed against the petitioner under Section 135 r/w Section 154 of the Electricity Act. The electricity connection was directed to be continued in those terms. The petitioner carried the matter in appeal; the Division Bench issued notice on 2.2.2007 and as an interim measure reduced the deposit amount to 25%.

4. By its order dated 17.12.2007, the Division Bench permitted the petitioner to withdraw the appeal. Thereafter the petitioner instituted a Suit before the Civil Judge claiming injunctive relief. In the said proceedings, an application under Order XXXIX Rule 1 & 2 CPC was moved, by which the petitioner sought an order that electricity should be continued in terms of the deposit made and to restrain the respondents from disconnecting the electricity supply to the premises.

5. The Civil Judge by order dated 1.3.2008 was of the view that since this court had issued directions for restoration of electricity supply on deposit of 50% of the impugned bill it lacked jurisdiction to vary the conditions for restoration and disconnection of the supply of electricity.

6. Learned counsel contended that the trial court's view is

palpably erroneous and unsustainable because this court's direction to make a deposit of 50% of the amount was without going into the facts of the case and on the basis that the dispute involved examination of facts. Counsel submitted that the petitioner has, however, right to contest the respondent's demand and the trial court has erred in not examining the case for interim relief on its merit.

7. Learned counsel for the respondent, on the other hand, urged that the petitioner has sought to invoke the aid of the Court no less than four occasions including an appeal to the Division Bench and also by asking for clarification of the orders of the court in different dates including 14.3.2008. It was submitted that in the light of the peculiar facts the court should refrain from interfering with the order of the trial court.

8. The above facts would show that the petitioner's grievance was entertained in writ petition under Article 226 of the Constitution. The order of 29.11.2006 recorded that in the event of the petitioner depositing 50% of the demanded amount the respondents would not disturb the status quo in the sense that they would not dis-connect the electricity supply. The petitioner was dissatisfied; he sought intervention through an appeal; initially the appellate court reduced the

amount to 25% as an interim measure. However, it later permitted to withdraw the appeal but consequent of this fact was that the original order of the court dated 26.11.2006 stood as it stands even today.

9 . This court has considered the impugned order of the Civil Judge dated 1.3.2008 and 20.3.2008. The learned Judge noticed while declining the application as follows:-

“01.03.2008

I am of the opinion that since the Hon'ble High Court of Delhi vide order dated 29.11.2006 had issued directions for restoration of the electricity supply on deposit of 50% of the impugned bill amount, this court has no jurisdiction/authority to entertain any dispute pertaining to the terms and conditions for restoration of the electricity supply/restraining the disconnection of the restored supply.

Ld. Counsel for the plaintiff has stated that he has moved a fresh application before the Hon'ble High Court for clarification of the order.

I have already held that this court has no jurisdiction/authority to pass any stay orders since the Hon'ble High Court of Delhi has already finally decided the issue vide its order dated 29.11.2006. The LPA has been dismissed as withdrawn and the clarification application was also dismissed. In these facts and

circumstances the interim order dated 24.12.2007 of this court stands vacated.

I have been informed by the Ld. Counsel for the plaintiff that the clarification application moved by the plaintiff before the Hon'ble High Court of Delhi would be listed for hearing on 2/3.03.2008.“

“20.03.2008

No doubt the Hon'ble Division Bench of the Hon'ble High Court of Delhi vide order dated 02.02.07 in LPA No. 89/07 directed restoration of the electricity supply subject to deposit of 25% of the impugned bill amount. However, the LPA was dismissed as withdrawn on 17.12.2007 and therefore the interim order passed in the LPA never attained finality.

The order dated 15.03.2008 was passed as the Ld. Counsel for the plaintiff had stated that the application had been allowed by the Hon'ble High Court. The copy of the order filed today shows that the application was not allowed in its entirety. The result is that the order dated 15.03.2008 is again vacated. The costs imposed on the defendant on 15.03.2008 are also waived off and it is further directed that the plaintiff shall bear the costs of the LC appointed on 15.03.2008.

Ld. Counsel for the plaintiff requests that he may be given one more opportunity of

being heard. “

10. Learned counsel for the respondent submitted that in the facts of this case this court may pass appropriate orders having regard to the previous circumstances in which the petitioner was placed and the spate of litigation faced by the parties. In view of this statement, the petitioner is directed to pay 10% of the bill amount within four weeks from today. This will be in addition to the 25% already deposited. This will enure and bind the parties till the conclusion of the proceedings before the trial court. Subject to compliance of these conditions, the respondent shall restore the electricity connection. The trial Court's order is modified to that extent.

The **CM (M) NO. 388/2008 and CM Nos. 4491/08 & 4492/08** are disposed of in the above terms.

S. RAVINDRA BHAT,J

MARCH 28, 2008

pkv

